



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board


Office of Chief Counsel

1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

TO: Dorothy Rice
Executive Director

FROM: 
Michael A.M. Lauffer
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: APR 16 2007

SUBJECT: PETITION OF PROHIBITION ZONE LEGAL DEFENSE FUND AND KEN BERRY AND DONNA AVILLA, WILLITS CITIZENS FOR ENVIRONMENTAL JUSTICE (CEASE AND DESIST ORDERS FOR LOS OSOS COMMUNITY SERVICES DISTRICT WASTEWATER TREATMENT AND DISPOSAL SYSTEM AND SETTLEMENT AGREEMENTS), CENTRAL COAST REGION: PROPOSED DISMISSAL
SWRCB/OCC FILE A-1825 AND A-1825(a)

On December 14 and 15, 2006, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) held hearings and adopted cease and desist orders (CDOs) for discharges from individual onsite wastewater treatment systems (hereinafter septic systems) within Los Osos and Baywood Park. The Central Coast Water Board also approved a settlement agreement that a number of individuals chose to enter into as an alternative to Central Coast Water Board consideration of a CDO applicable to their property. The State Water Resources Control Board (State Water Board) received defective petitions from Sullivan & Associates, on behalf of a number of petitioners who are part of the Prohibition Zone Legal Defense Fund,¹ (referred to as PZLDF Petitioners) as well as from Ken Berry, Donna Avilla, and Willits Citizens for Environmental Justice (referred to as WCEJ Petitioners).² The WCEJ petition included a request for a stay of the Central Coast Water Board actions.³ Following a letter from the State Water Board Office of Chief Counsel, both sets of petitioners

¹ The petition stated that "[p]etitioners include designated parties who were issued Cease and Desist Orders at the December 14 and 15, 2006 hearings before the RWQCB, including but not limited to" a listing of names, in addition to Prohibition Zone Legal Defense Fund and one additional petitioner who had asked "to remain anonymous for personal safety." Petition dated January 16, 2006 [sic]. An attached exhibit listed names and addresses, again noting that the listing included but was not limited to those petitioners.

² Ken Berry and Willits Citizens for Environmental Justice initially sought review only of particular CDOs, listed by number. These petitioners later sought to amend their petition, seeking review of the settlement agreements as well.

³ Because this memorandum recommends dismissal of the petitions, it is unnecessary to consider the request for a stay.

APR 16 2007

(collectively Petitioners)⁴ filed amended petitions within the time provided to cure the stated defects.⁵

Although the new filings provided additional information for some petitioners and did include copies of the CDOs and settlement orders, the PLDFZ Petitioners stated that:

[W]e are objecting to a number of orders, rulings and determinations, not just the CDOs. Copies of the challenged actions, orders, decisions, "Settlement Agreements and Orders" or inactions were attached to our Petition or are attached hereto. We enclose, as per your request, a copy of each and every CDO and CAO^[6] which is in our possession or accessible to us that designates a petitioner. In the event any of the orders or rulings are not included, they should be part of the administrative record which has been requested since November 17, 2006 and are available to the SWRCB and RWQCB and are not yet available to Petitioners.^[7]

As such, the precise actions for which Petitioners have requested review are somewhat unclear, as is the completeness of the listing of petitioners.⁸ For the purposes of this memorandum, it will be assumed that the specific petitioners listed, including those listed only by number, are the only ones who have requested review.

Only final actions of the Central Coast Water Board are subject to review by the State Water Board pursuant to Water Code section 13320.⁹ Therefore, this memorandum will consider only final actions of the Central Coast Water Board, including CDOs adopted on December 14 and December 15, 2006, and settlement agreements signed by petitioners, by the Prosecution

⁴ The WCEJ Petitioners refer in places to the petition filed by PZLDF Petitioners and in some cases appear to rely upon their allegations. In turn, the PZLDF Petitioners state their intention to incorporate the WCEJ petition by reference.

⁵ Letter from Elizabeth Miller Jennings, Staff Counsel IV, to Shaunna Sullivan, Ken Berry and Donna Avilla (Jan. 23, 2007). That letter noted defects for requirements pursuant to California Code of Regulations, title 23, section 2050, subdivisions (a)(1) (name, address, and other contact information for each petitioner) and (a)(2) (state specific action or inaction of the regional water board which the State Water Board is requested to review, and include a copy of each order or resolution, or state any reason for not including the order), and section 2053 (requirements for issuance of a stay). Section 2051 provides that the State Water Board may either dismiss defective petitions pursuant to section 2052 or notify the petitioner of the defects and the period within which to file an amendment.

⁶ As discussed below, Petitioners take the position that the settlement agreements were actually cleanup and abatement orders (CAOs), not agreements.

⁷ Letter from Shaunna Sullivan to Elizabeth Miller Jennings (Feb. 1, 2007).

⁸ It should further be noted that the administrative record referred to in the petition was evidently requested by PZLDF nearly a month in advance of any final action of the Central Coast Water Board, and thus could contain no actions subject to review by the State Water Board pursuant to Water Code section 13320.

⁹ "Within 30 days of any action or failure to act by a regional board under subdivision (c) of Section 13225, Article 4, (commencing with Section 13260) of Chapter 4, Chapter 5 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370), Chapter 5.9 (commencing with Section 13399.25), or Chapter 7 (commencing with Section 13500), any aggrieved person may petition the state board to review that action or failure to act." (Wat. Code, § 13320, subd. (a).)

APR 16 2007

Team¹⁰ and approved by the Assistant Executive Officer. Other interim determinations or rulings are not themselves separate actions or requirements subject to State Water Board review under the applicable statute.

I. BACKGROUND

In 1983, the Central Coast Water Board adopted Resolution 83-13, a prohibition of waste discharges from individual and community sewage disposal systems (septic systems) in the Los Osos/Baywood Park area. The prohibition became effective November 1, 1988.¹¹ In addition, Resolution 83-13 immediately prohibited discharges from such systems within the prohibition area in excess of an additional 1,150 housing units. Resolution 83-13 amended and was made a part of the Central Coast Water Quality Control Plan (Basin Plan). The Central Coast Water Board found, pursuant to Water Code section 13280, that "discharges of waste from new and existing individual disposal systems . . . utiliz[ing] subsurface disposal in the affected area will result in violation of water quality objectives; will impair beneficial uses of water; will cause pollution, nuisance, or contamination, and will unreasonably degrade the quality of waters of the State."¹² The affected area is referred to as the Prohibition Zone.¹³

Multiple attempts to arrange for financing and construction of a community sewer system have failed, for various reasons. In 2005, the Los Osos Community Services District (LOCSD) began construction on a project but stopped shortly thereafter. Subsequently, the Legislature adopted Government Code section 25825.5, effective January, 1, 2007, which allows the County of San Luis Obispo (County) to "undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to meet the wastewater collection and treatments needs within the district."¹⁴ The statute also allows the County to "levy benefit assessments consistent with the requirements of Article XIII D of the California Constitution . . ."¹⁵ Therefore, construction of any future community sewer system is subject to a number of contingent circumstances.

¹⁰ "Prosecution Team" or "prosecution staff" will refer to those Central Coast Water Board staff members with responsibility for regulating the groundwater discharges in Los Osos and assigned to advocate in support of the enforcement action before the Central Coast Water Board members.

¹¹ Central Coast Water Board, Resolution 83-13, adopted September 16, 1983.

¹² Water Code section 13280 provides that: "A determination that discharge of waste from existing or new individual disposal systems or from community collection and disposal systems which utilize subsurface disposal should not be permitted shall be supported by substantial evidence in the record that discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state."

¹³ See, Prosecution Staff Report, prepared August 29, 2006.

¹⁴ Gov. Code, § 25825.5, subd. (c).

¹⁵ Cal. Const., art. XIII D sets forth requirements and procedures for such assessments, including the requirement for a public hearing and a ballot mailing by which owners of specified parcels may indicate support or opposition to a proposed assessment. An agency may not impose an assessment if there is a majority protest.

APR 16 2007

The Central Coast Water Board has previously issued enforcement orders against LOCSD.¹⁶ In early 2006, Central Coast Water Board staff charged with regulating groundwater discharges in Los Osos concluded that additional enforcement action was necessary in order to move toward compliance with the discharge prohibition.¹⁷ Prosecution staff thereafter conducted a random selection of 50 properties within the Prohibition Zone and issued a hearing notice and draft cease and desist orders for individual homeowners operating septic systems alleged to be in violation of the discharge prohibition.¹⁸ Five properties were eliminated from the original listing on the basis of a neighborhood community sewer system or a community septic system subject to an existing CDO issued to LOCSD. The remaining 45 draft CDO recipients were made Designated Parties for proceedings originally slated to be conducted in the spring of 2006. In May 2006 the matter was continued until further notice, at the request of the Prosecution Team. This request was made in order to allow for new prosecution counsel, in response to disqualification objections made by LOCSD.¹⁹

On August 4, 2006, the Central Coast Water Board Chair, after reviewing briefs submitted by designated parties and consulting with counsel, ruled that the Prosecution Team would be required to present its entire case from the beginning.²⁰ The deadline for the submission was 5:00 p.m. on September 8, 2006. On September 7, 2006, the Assistant Executive Officer issued a Notice of Public Hearing for consideration of the proposed CDOs on November 2 and 9, 2006, specifying the scope and procedures for the hearing, including due dates for submittals. (As will be discussed below, Roger Briggs, Executive Officer, has been away on sabbatical and out of the country since mid-October. Other than submitting to a deposition on October 4, 2006, he has not personally participated in the proceeding since that date.) Responses were initially due on October 13, 2006. A revised notice was issued on October 16, 2006, postponing the hearing dates until December 14 and 15, 2006, and extending the deadlines for designated party responses until November 15, 2006. This revision was made in order to allow parties a full 30 days to review all documentation submitted by the Prosecution Team. On December 1, 2006, the Prosecution Team submitted its legal and scientific rebuttals, including a modified proposed CDO. The modifications proposed were designed to address

¹⁶ See, Central Coast Water Board Administrative Civil Liability Order No. R3-2005-0137; Central Coast Water Board Order No. 00-131.

¹⁷ The Central Coast Water Board separated its functions in this matter. Prosecution staff was charged with determining what, if any, enforcement actions to commence. The board members themselves performed the judicial function with the assistance of an advisory team.

¹⁸ The Prosecution Team Staff Report, dated August 29, 2006, elaborates: "Staff used the most recent County Tax Assessor information to generate a mailing list of property owners in the Prohibition Zone. A computer-generated set of random numbers was then applied to the mailing list. In cases where the Assessor information indicated that the property owner does not live at the property, staff checked voter registration lists, which are sorted by address, to find tenants' names. Properties were taken in number order of the random numbers. In other words, property owners and tenants of those properties receiving the lowest random numbers received the first group of CDOs." (Staff Report, at p. 5, fn. 1.)

¹⁹ According to the request for continuance, the alleged disqualification and accompanying motion to dismiss all proposed CDOs was based upon *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810 and an additional superior court case currently under appeal. While the prosecution staff disagreed with LOCSD's argument for disqualification, counsel for the prosecution voluntarily agreed to withdraw in order to allow substitute counsel from the State Water Board Office of Enforcement or, in the alternative, an attorney from another regional water board.

²⁰ Central Coast Water Board, Preliminary Notice of Ruling Regarding Presentation of Evidence Supporting the Issuance of Individual Cease and Desist Orders For Residents of Los Osos and Baywood Park (Aug. 4, 2006).

APR 16 2007

concerns raised by Designated Party responses relating, in part, to the effect of Assembly Bill 2701, now codified as Government Code section 25825.5.

The Central Coast Water Board held hearings on December 14 and December 15, 2006. Prior to considering individual CDOs, the board members considered and approved a settlement agreement that had been the product of negotiations between the Prosecution Team and some of the Designated Parties.²¹ The settlement agreement consists of an agreement to cease unpermitted discharges 60 days after the site connection availability of a community wastewater collection and treatment system, or, if no benefit assessment is approved pursuant to the County's anticipated assumption of the project, cease discharging no later than January 1, 2011. The latter circumstance is subject to regional water board permitting requirements for any discharge from the site that is the subject of the agreement. The agreement also requires certain interim compliance tasks, including a pumping and inspection requirement. The agreement provides that violations are enforceable by order issued under Water Code section 13304, under the authority of the Executive Officer.

A number of the Designated Parties chose to enter into the settlement agreement (hereinafter, Settling Parties). The remaining parties were given the opportunity to present their evidence and argument and to cross-examine the Prosecution Team. The Central Coast Water Board voted to adopt CDOs against these parties, including several parties who did not personally appear, although the Prosecution Team indicated that it had received signed certified mail receipts for those parties not appearing. A small number of the hearings were continued, including several instances where it was unclear whether or not mailings on the matter had been received.

II. ISSUE

Does the petition present issues that merit consideration of the State Water Board?

III. DISCUSSION

No. The State Water Board has complete discretion to dismiss petitions that fail to raise substantial issues that are appropriate for review.²² The following discussion analyzes contentions raised in the petition and concludes that Petitioners have not shown that the Central Coast Water Board acted improperly in issuing individual CDOs. Nor have Petitioners shown that the settlement agreements were improper.

Contention: The December 14 and 15, 2006 hearings were conducted in violation of Petitioners' due process rights.

Discussion: The Central Coast Water Board provided adequate notice and opportunity for comment on the orders adopted at the December hearings. Petitioners have stated no basis for a violation of their due process rights in the adoption of the CDOs.

²¹ See, Settlement Agreement and Order, approved December 14, 2006.

²² *People v. Barry*, 194 Cal.App.3d 158, 175-177 (1987); *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1114; Cal. Code Regs., tit. 23, § 2052 subd. (a)(1).

APR 16 2007

Petitioners' claims that the Designated Parties were not afforded basic due process protections are based upon several general allegations. First, Petitioners argue that the Central Coast Water Board failed to provide them with notice (or with adequate notice) of submissions of the Prosecution Team and with opportunity to object to interim rulings issued by the Central Coast Water Board Chair. Petitioners also contend that the Central Coast Water Board missed its own deadlines, to the detriment and disadvantage of the Petitioners, and that the Central Coast Water Board wrongfully refused to admit evidence and documents into the record, all in denial of the Designated Parties' due process rights.

Due process requires reasonable notice and a meaningful opportunity to be heard.²³ Due process is a flexible concept, and "there is no precise manner of hearing which must be afforded; rather the particular interests at issue must be considered in determining what kind of hearing is appropriate."²⁴ A determination of the requirements of due process will involve a weighing and balancing of the following factors: the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used, and the probable value of additional procedural safeguards; and the governmental interest at issue, including the fiscal and administrative burden of additional procedures.²⁵

Many of the proposed CDO recipients either entered into settlement agreements or appeared at the specified time and place for the hearing.²⁶ Thus, these Designated Parties clearly had notice of the proceeding and of their opportunity to participate. Of those who did not appear, the transcript of the December 15 hearing appears to indicate that the designated parties received the hearing notices and proposed CDOs via certified mail and in many cases submitted written comments.²⁷ The Prosecution Team's revised documentation listing and proposed CDO also indicates that it was disseminated to the Designated Parties via certified mail.²⁸ The hearing notices (initial and revised) issued by the Central Coast Water Board required that Designated Parties provide an e-mail address or request written notification of new submissions and information posted on the Central Coast Water Board web page.²⁹

Petitioners describe at length the procedural direction issued by the Central Coast Water Board Chair and the alleged defects in the notices and submittals issued thereafter by both the Chair

²³ *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 286. See also, *Matthews v. Eldridge* (1976) 424 U.S. 319, 333 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' [citations]").

²⁴ *Mohilef v. Janovici*, 51 Cal.App.4th at 286.

²⁵ *Matthews v. Eldridge*, 484 U.S. at 335.

²⁶ See, Transcript, Public Meeting Before the California Environmental Protection Agency, Central Coast Regional Water Quality Control Board, In the Matter of Proposed Cease and Desist Orders Against Individual Property Owners and Residents in Los Osos/Baywood Park Prohibition Zone Vol. II (Dec. 15, 2006) at pp. 377-378.

²⁷ Transcript (Dec. 15, 2006) at pp. 368 – 386. In one instance, the Prosecution Team recommended a continuance because mail had been returned from a specific address. (See, Transcript (Dec. 15, 2006) at p. 381.) In any event, Petitioners provide no specific allegations regarding parties who did not receive notice.

²⁸ Dated September 8, 2006.

²⁹ For those without internet access, files and documentation were available for review at the offices of the Central Coast Water Board.

APR 16 2007

and the Prosecution Team. A central component of Petitioners' arguments is the assumption that all submissions were required to be served by mail on all parties, including multiple parties residing at a particular address. Petitioners also claim a due process violation based upon a continuance of the matter from November to December, in order to allow the parties a full 30 days to submit comments on the complete listing of Prosecution Team documents. Petitioners' contention appears to be that the late posting of documents should not have been allowed.³⁰

In evaluating the factors governing due process requirements, it is clear that Petitioners have an interest in the continued availability of a system for wastewater disposal from their homes. However, the discharge prohibition was adopted in 1983 and the Central Coast Water Board was at that time required to consider many of the same issues now raised by Petitioners as to the merits of the prohibition. The action at issue here does not deprive Petitioners of any right without further enforcement actions that are themselves subject to hearing.³¹

The Central Coast Water Board provided adequate procedures to afford Designated Parties with a meaningful opportunity to respond. A requirement for formal service of process for interim submissions and other information provided would have posed a substantial burden on the Central Coast Water Board, without creating any additional safeguard against erroneous determinations as to applicability of the discharge prohibition or to the propriety of the CDOs as a method of enforcing it. The Central Coast Water Board has a valid interest in protecting the quality of waters of the state, and thus in enforcing a prohibition that has been in effect for nearly twenty years without appreciable progress toward compliance.

Petitioners' arguments that they should have been allowed to object to interim, procedural rulings of the Central Coast Water Board Chair appear to assume that a hearing was required prior to such rulings, an assumption that is unsupported.³² Petitioners make a similar assumption in objecting to the Chairman's Order Regarding Prosecution Team's Objection to Evidence, issued on December 8, 2006. Petitioners claim that the Chair "wrongfully refused to admit the large majority of Petitioners' evidence and documents into evidence."³³ However, Petitioners provide no detail or support for their claim, merely asserting that these rulings demonstrate "the RWQCB's continued bias and inability to conduct a fair hearing."³⁴ Such unsupported claims do not show a due process violation.

Contention: Petitioners claim that the hearings were conducted in violation of the Designated Parties' constitutional right to confront their accuser.

³⁰ Petitioners claim that "[t]he RWQCB failed to meet its self-imposed deadlines . . . to the detriment and disadvantage of Petitioners." PZLDF Petitioners, Memorandum of Points and Authorities in support of Appeal (Jan. 16, 2007) at 15. However, since the Central Coast Water Board continued the matter in order to provide more time to the Designated Parties wishing to respond, no detriment is apparent.

³¹ A discharge of waste into water of the state is a privilege, not a right. (Wat. Code, § 13263, subd. (g).)

³² Petitioners were free to state their objections at the hearings held on December 14 and 15.

³³ PZLDF Petitioners Points and Authorities, at p. 18.

³⁴ *Ibid.* By contrast, the Chairman's ruling addresses in detail the basis for denying the submissions. Reasons for denial included vague descriptions, failure to submit documents not in the possession of the Central Coast Water Board, irrelevance and lack of authentication.

APR 16 2007

Discussion: Petitioners' claim that they were not given the opportunity to depose Executive Officer Roger Briggs does not demonstrate a violation of the U.S. Constitution. The Designated Parties were given an opportunity to cross-examine the Prosecution Team that recommended the CDOs and presented evidence. The Petitioners have not shown that adoption of the CDOs depended specifically upon any evidence provided by Roger Briggs.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . ." While case law supports requiring the opportunity to confront and cross-examine witnesses in administrative actions,³⁵ Petitioners have not shown that they were denied this opportunity. Nor have Petitioners shown why the testimony of Roger Briggs is necessary to their case.

Petitioners were given the opportunity at the hearing to cross-examine the Prosecution Team that presented evidence supporting the CDOs. Nonetheless, Petitioners claim that Roger Briggs "is the principal architect of the orders under which Petitioners have been prosecuted, and . . . is responsible for the alleged research, reasoning, and actual issuance of the orders to be enforced by CDOs and the Approved Settlement Agreement."³⁶ Petitioners point to "[t]he Water Basin Plan directed by Briggs and the accusations set forth in writing in Briggs' numerous directives" as issues on which they are entitled to question him.

Roger Briggs has been out of the country on sabbatical since mid-October, and thus was unavailable for cross-examination at the December hearings. The dates for Mr. Briggs' planned sabbatical and unavailability were stated by the Prosecution Team as early as a June 19, 2006, brief.³⁷ At that time, the Prosecution Team noted that Mr. Briggs had already been called as a witness and cross-examined by LOCSD "and by all parties requesting that opportunity" in the course of the proceedings. On October 17, 2006, the Chairman issued a ruling on a Deposition Subpoena received by the Central Coast Water Board on October 4, 2006. The subpoena, which sought the deposition of Roger Briggs on October 28, 2006, was quashed as untimely and otherwise defective by the Chairman's ruling.³⁸ The ruling further indicated, however, that Mr. Briggs agreed to be deposed and made himself available on October 4, 2006.³⁹

Petitioners have not stated in any detail the basis for seeking to cross-examine Mr. Briggs. The "Water Basin Plan" referred to by Petitioners as having been "directed by Briggs" was adopted

³⁵ *Goldberg v. Kelly* (1970) 397 U.S. 254, 270.

³⁶ PZLDF Petitioners Points and Authorities, at 18.

³⁷ Prosecution Team Response to Questions Regarding Presentation of Prosecution Team Case (Jun. 19, 2006).

³⁸ Notice of Chairman's Ruling Regarding Subpoena Documents Submitted on October 4, 2006 (Oct. 17, 2006). Petitioners argue that the Chairman erroneously denied the subpoena based upon a misreading of the statute, arguing that Government Code, section 11450.20, subdivision (a) required the Central Coast Water Board to issue a subpoena at the request of the parties. Moreover, there is no doubt the presiding officer may quash a subpoena. (Gov. Code, § 11450.30.) Petitioners also imply that Mr. Briggs's availability on October 4 was their sole opportunity to depose him, as they claim that they had not yet been provided with the documents upon which the Prosecution Team intended to rely. In fact, the Prosecution Team submitted a lengthy document listing on September 7, 2006, noted as an updated version of a document originally dated April 19, 2006.

³⁹ *Id.*, at p. 2.

APR 16 2007

by the Central Coast Water Board itself, not by the Executive Officer.⁴⁰ Petitioners attempt to show the necessity of Mr. Briggs' testimony with a quotation from the Prosecution Team's response to LOCSD's attempts to disqualify Mr. Briggs.⁴¹ The quotation, when placed in context, serves only to illustrate that the Prosecution Team did not view Mr. Briggs as having been disqualified from the proceeding under the legal premise urged by LOCSD.

Petitioners were provided the opportunity to respond to evidence presented by the Prosecution Team, both in written comments and at the hearing.⁴² Petitioners were allowed to cross-examine members of the Prosecution Team, who presented the case against them. Due process requires only the right to confront actual witnesses providing evidence.⁴³ Petitioners were afforded the opportunity to confront witnesses and evidence against them consistent with the Confrontation Clause of the U.S. Constitution. In any event, Petitioners appear to have sought Mr. Briggs' testimony in order to pursue the rationale behind the discharge prohibition, which was not at issue in the proceeding.

Contention: Petitioners claim that the Central Coast Water Board lacked authority to issue CDOs to individual homeowners because the definition of "person" did not specifically include individuals. Petitioners claim that this is further illustrated by the fact that governmental agencies and not property owners are responsible for managing discharges.

Discussion: Petitioners' claim that the Legislature intentionally left the term "individual" out of its definition of "person" is absurd and patently incorrect. Moreover, Petitioners' related claim that "Los Osos residents and property owners are not responsible for holding discharge permits" is contrary to all statutory authority.

Water Code section 13301 provides that where a discharge of waste is taking place, or threatening to take place, in violation of discharge prohibitions prescribed by the regional water board, "the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action." Water Code section 13050, subdivision (c) states that "'person' includes any city, county, district, the state and the United States, to the extent authorized by federal law."

⁴⁰ The "issuance, modification or revocation of any water quality control plan [or] water quality objective" is a non-delegable duty of the Central Coast Water Board. (Wat. Code, § 13223, subd. (a)(2).)

⁴¹ PZLDF Petition, Points and Authorities, at 19. Petitioners mistakenly describe the quoted material as "a State Water Resources Control Board order dated May 4, 2006." Petitioners further mischaracterize the quotation: "[B]y your own admission [apparently addressing the State Water Board], such a refusal to allow Petitioners the right to confront and cross-examine witnesses such as Briggs . . . is not possible without violating the constitutionally guaranteed rights of Petitioners . . ." Points and Authorities, at 19.

⁴² To the extent that documents relied upon by the Prosecution Team were signed by Mr. Briggs, this may reflect his role as Executive Officer as much or more than his personal involvement with constructing specified documents.

⁴³ *Pavlik v. U.S.* (1991) 951 F.2d 220, 224. "The absence of an investigating agent's testimony at the hearing did not violate the Constitution . . . [Appellants] argue that due process guarantees them a right to confront not only the actual witnesses against them, but also persons who could have been witnesses against them. However, we have specifically held, in the context of a criminal trial, that no such right exists [citations]." *Id.*

APR 16 2007

Petitioners claim that the Legislature's failure to define "person" to include individuals demonstrates that the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) does not allow issuance of CDOs to individuals. The argument is wrong and has no merit. The Porter-Cologne Act's definition augments the Water Code's already expansive definition of "person" in section 19, which plainly includes the individuals subject to the enforcement action.⁴⁴ Porter-Cologne builds on this definition by stating that "as used" in the Porter-Cologne Act, "'Person' includes any city, county, district, the state, and the United States, to the extent authorized by federal law."⁴⁵ Clearly, by choosing not to define "person" for purposes of the Porter-Cologne, but instead state what is "included" as a person, the Legislature built off the Water Code's underlying definition. Moreover, the term "persons" is used throughout the Porter-Cologne Act.⁴⁶ Petitioners' argument would posit that individuals and even businesses are not bound by the laws governing water quality, because they are not identified in the non-exhaustive list of section 13050. The statutory definitions simply cannot be read so narrowly without gutting the intent behind Porter-Cologne.⁴⁷ "Person" of course includes individual human beings as provided in Water Code section 19—the point of the definition in section 13050 is to clarify that government agencies are also included in the definition.⁴⁸

Further, Petitioners' claim that individual property owners "are not responsible for holding discharge permits" simply ignores the law.⁴⁹ All persons discharging waste that could affect the quality of waters of the state must file a report of waste discharge.⁵⁰ The regional water board then must prescribe requirements as to the nature of a discharge, except for discharges into a community sewer system, implementing any relevant water quality control plan.⁵¹ No discharge into waters of the state creates a vested right to continue the discharge, and such a discharge is a privilege, not a right.⁵² The discharge prohibition that has been in place since 1988 applies to individual systems, and Petitioners have provided no authority to suggest that individuals are not responsible as dischargers

Contention: Petitioners claim that the Central Coast Water Board wrongfully denied legitimate requests for continuances in violation of Petitioners' Equal Protection rights.

⁴⁴ "'Person' means any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company." (Wat. Code, § 19.)

⁴⁵ Wat. Code, § 13050, subd. (c).

⁴⁶ See, Wat. Code, §§ 13260, subd. (a), 13264, subd. (a), and 13304 subd. (a). Note also that Water Code section 13050, subdivision (m), defining "nuisance", uses "persons" and "individuals" almost interchangeably.

⁴⁷ Petitioners' claim is that *only* governmental entities were bound by Porter-Cologne.

⁴⁸ As originally adopted, the definition read: "'Person' *a/so* includes any city, county, district, the state or any department or agency thereof." (Final Report of the Study Panel to the California State Water Resources Control Board (Mar. 1969) at p. 23.) In enlarging the scope to include the federal government, the Legislature certainly did not intend to exclude individuals and businesses.

⁴⁹ PZLDF Petitioners, Points and Authorities in Support of Appeal (Jan. 16, 2007) at p. 33.

⁵⁰ Wat. Code, § 13260, subd. (a).

⁵¹ Wat. Code, § 13263, subd. (a).

⁵² *Id.*, § 13263, subd. (g).

APR 16 2007

Discussion: It is unclear in what manner Petitioners allege that denial of a continuance violates constitutional Equal Protection provisions, since this claim is not developed. Other statements regarding failure to grant continuances appear to assume that indefinite continuances should have been granted to particular parties.

Petitioners state that elderly persons in failing health were not granted continuances. Petitioners provide no detail suggesting that a later hearing date was necessary.⁵³ In one instance cited by Petitioners, a review of the December 15 hearing transcript indicated that the party actually was granted a continuance based upon health problems. The transcript also indicated that the board member who had reviewed the request for continuance viewed it as "[r]eally [a] request to grant clemency and to remove them totally from the list. . . ."⁵⁴ Petitioners have not shown a rational basis for excusing parties completely from the enforcement action.

Contention: Petitioners claim that the CDOs are an improperly motivated attempt to influence a County benefit assessment vote. Petitioners further reiterate their position that individuals have no control over the system.

Discussion: Petitioners' attempt to characterize the enforcement actions undertaken by the Central Coast Water Board as improperly motivated fails to acknowledge that the discharge prohibition already does apply to individual systems. Whether or not a collection and treatment system is built, individual homeowners are responsible for compliance with the prohibition.

Petitioners take the position that the CDO milestones premised on progress with a County sewer system project (with a benefit assessment approved by July 1, 2008) improperly attempt to influence any vote on the matter. Petitioners provide no evidence for this assertion, other than pointing to the milestones used as compliance triggers in the CDOs. Further, the argument mainly turns on individual homeowners' lack of control over such a process. This argument ignores the fact that it is individual discharges that are prohibited by Resolution 83-13. While a community sewage collection and disposal system can facilitate compliance with the discharge prohibition, the ultimate responsibility must lie with dischargers. Any other conclusion assumes that the discharge prohibition can indefinitely be postponed in its effect if no governmental or other body takes responsibility and acts. The Water Code provisions that limit the prohibition of individual disposal systems do not mean that such prohibitions can never be enforced.⁵⁵

Contention: The CDOs are an improper remedy with inappropriate consequences in that cessation of discharges has nothing to do with improving water quality and instead serves only to punish Petitioners for living in Los Osos.

Discussion: Petitioners have provided no support for this proposition. As with previous contentions, the basis appears to be property owners' lack of control over availability of a community wastewater treatment system.

⁵³ PZLDF Petitioners state that correspondence requesting continuances were included as exhibits to "writ pleadings filed on December 7, 2006, and are incorporated herein by reference." Points and Authorities, at 17-18.

⁵⁴ Transcript, Public Meeting Before the Central Coast Water Quality Control Board (Dec. 14 and 15, 2006) at p. 377-378.

⁵⁵ Wat. Code, §§ 13280 – 13282.

APR 16 2007

Petitioners state that interim measures required in the CDOs have "no nexus" to clean water, apparently because "[t]he septic tanks of most Petitioners and CDO recipients have recently been pumped, and Petitioners do not object to pumping septic tanks every three years."⁵⁶ Petitioners also argue that the CDO provisions describing potential enforcement actions under Water Code section 13268 or section 13350 (described by Petitioners as including mandatory fines of \$500 per day)⁵⁷ constitute inappropriate ramifications unrelated to water quality.

This contention appears to assume that any attempt to enforce the discharge prohibition is inappropriate because it could result in adverse action against homeowners. However, the CDOs cannot be enforced without further proceedings that would require a hearing. Petitioners rely on speculative consequences, assuming the validity of their arguments and stating that voluntary compliance would accomplish the same purpose. Such compliance is equally speculative.

Contention: The Central Coast Water Board has not provided any evidence of any violations by individual property owners or individual septic systems.

Discussion: This contention assumes that a system approved at the time of its installation and functioning as designed is not in violation of the discharge prohibition. The claim is without merit.

As noted above, Resolution 83-13 prohibits "discharges of waste from individual and community sewage disposal systems . . . effective November 1, 1988" within the relevant zone, without qualification. Continued use of onsite wastewater treatment systems after that date, whether operating within design parameters or not, constitutes a violation of the prohibition unless it can be shown that such systems do not discharge. While one or more Designated Parties at the hearing refused to answer questions as to use of their septic system (apparently on the grounds of self-incrimination),⁵⁸ none of the Petitioners have shown that their systems are not operational or do not discharge.⁵⁹

Contention: Petitioners claim that issuance of the CDOs was arbitrary, capricious, lacking in evidentiary support, and an abuse of discretion.

⁵⁶ PLDF Petitioners, Points and Authorities, at 37.

⁵⁷ The CDO states that failure to comply with its provisions "may subject the discharger to further enforcement action including assessment of civil liability under Sections 13268 or 13350 of the Water Code" Petitioners' argument refers to Water Code section 13350, subdivision (e)(1)(A), which provides: "When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated." Notably, subdivision (f) of that statute allows the regional water board to administratively impose liability in an amount less than the minimum if it makes express findings based upon factors specified in Water Code section 13327. Moreover, these factors must be considered when issuing any administrative civil liability order.

⁵⁸ It is unnecessary to address the availability of the Fifth Amendment privilege against self-incrimination in an administrative proceeding, since the contention is otherwise unavailing.

⁵⁹ Further, the Petitioners claim that a requirement to cease discharging by 2011 will force them out of their homes. See, PZLDF Petitioners Points and Authorities, at 36. This is inconsistent with any claim that their systems do not discharge.

APR 16 2007

Discussion: As illustrated above, Petitioners' attempts to show that they are not responsible for discharges from septic systems or that they have no control over the construction of a treatment plant are unavailing. The discharge prohibition applies to individual systems, and dischargers are individually responsible for their discharges of waste.

Contention: Petitioners argue that the settlement agreements entered into by some Petitioners are unenforceable and void because they were procured under duress, through coercion and fraud.

Discussion: Petitioners have not supported these claims. Petitioners' disagreement as to the meaning of a term allowing for no required minimum penalty seems misplaced and provides no basis for a finding of fraud or coercion.

The draft settlement agreement was considered by the Central Coast Water Board at the hearing on December 14, 2006.⁶⁰ The Prosecution Team, after conferring with a number of parties wishing to reach a settlement, presented a single draft agreement for the Board's approval. The Central Coast Water Board approved the draft settlement agreement after extensive discussion of what the terms meant and how they would apply. The Board made changes relating to attachments that set forth licensing requirements and forms for inspections and reporting. The settlement agreement was approved as an alternative to consideration of a CDO. The agreement provided that violations would be subject to enforcement under Water Code section 13304. Although the Central Coast Water Board did not discuss it at the hearing, the Prosecution Team sought to include a term that would clarify there would not be a minimum fine requirement in the event of violation. The term specifying this was evidently omitted by error in the first version of the approved agreement sent out to Designated Parties. According to Petitioners, a corrected version was sent on January 3, 2007.

The California Civil Code defines actual fraud, constructive fraud, duress and undue influence within the context of contractual consent.⁶¹ Petitioners provide little support to their claims, only touching upon the manner in which the elements of these defenses to contract formation are met. Petitioners claim that settling parties were unaware of the ramifications of signing the agreement,⁶² and that they "were unaware that the Settlement Agreement and Order was a CAO [cleanup and abatement order]."⁶³ This statement appears to conflate the enforcement

⁶⁰ The settlement negotiations took place between the Prosecution Team and certain Designated Parties. The Prosecution Team did not have authority to bind the Board, both because regional water board authority can be delegated only to the Executive Officer and because authority to issue a CDO resides solely with the regional water board. (Wat. Code, §§ 13223, 13301.)

⁶¹ Civ. Code, §§ 1569 – 1575.

⁶² Petitioner's claims of misrepresentation rely heavily on the following term: "... [T]he parties agree that California Water Code section 13350(e)(1)(A) does not require the Water Board to impose a required minimum penalty of \$500 for each day of discharge in violation of this agreement." Petitioners claim that this "does not make clear that there is no required minimum penalty which must be imposed ... as was promised. ..." PZLDF Petitioners, Points and Authorities, at 27. Petitioners' argument appears to be with the Water Code, which requires the mandatory minimum unless the Water Board makes certain findings, rather than with the agreement itself. The term does clarify that the Central Coast Water Board, pursuant to the factors required for consideration, will not seek to impose the mandatory minimum.

⁶³ PZLDF Petitioners, Points and Authorities, at 28.

APR 16 2007

mechanism for violation of the agreement with the agreement itself. Further, the fact that designated parties were provided the opportunity to avoid a hearing and issuance of a CDO by entering a settlement agreement in no way establishes an abuse of authority, coercion or duress. The Central Coast Water Board was within its authority to consider and issue CDOs to enforce the discharge prohibition. The availability of a settlement agreement to accomplish this purpose, separately enforceable in the event of violation, constitutes neither misrepresentation nor inappropriate use of governmental authority.

Contention: Petitioners claim that the CDO process violated Equal Protection because, among other things, the first CDO recipients were forced to present their case before others that might be issued in the future and were unable to incorporate potential later testimony by reference.

Discussion: Issuance of the CDOs was not based on any improper classification of individuals, and the Central Coast Water Board articulated a rational basis for its enforcement strategy. Petitioners have shown no basis to sustain an Equal Protection challenge.

Under the federal and state constitutions, a state is prohibited from "deny[ing] to any person within its jurisdiction the equal protection of the laws."⁶⁴ Petitioners' claim that the random selection of CDO recipients and the order in which their cases were heard violated Petitioners' constitutional right to equal protection of the law. Petitioners also claim that other procedural steps were constitutionally flawed.⁶⁵

Petitioners assume that selective enforcement of the law, on its own, violates the Equal Protection Clause. However, courts have found that " 'the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation' so long as 'the selection was [not] deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.' "⁶⁶ The random selection process used by the Prosecution Team did not constitute an impermissible classification, even if Petitioners were treated differently than other residents in the Prohibition Zone. "What the equal protection guarantee prohibits is state officials 'purposefully and intentionally singling out individuals for disparate treatment on an invidiously discriminatory basis.' "⁶⁷ Petitioners have not provided any basis to make such a showing.

Contention: Petitioners claim that the Central Coast Water Board lacks the authority to issue CDOs to homeowners with septic systems existing prior to the adoption of Resolution 83-13.

⁶⁴ U.S. Const., 14th Amend.; Cal. Const., art. I, § 7, subd. (a).

⁶⁵ Petitioners here object to continuances granted to some of the Designated Parties at the end of the proceedings on December 15. Petitioners also claim that married couples were denied separate and full time allotments to present their cases individually for property they both occupied. Although Petitioners style this as an impermissible denial of equal protection based upon marital status, they have not shown that unmarried joint owners were treated differently.

⁶⁶ *U.S. v. Kidder* 869 (9th Cir., 1989) F.2d 1328, 1335-1336 (quoting *Bordenkircher v. Hayes* (1978), 434 U.S. 357, 364).

⁶⁷ *People v. Superior Court of Los Angeles County* (1999), 75 Cal.App.4th 394,403-404.

APR 16 2007

Discussion: This argument is based upon a misreading of the provisions of Resolution 83-13. All discharges from onsite wastewater systems are now prohibited, whether or not a home was constructed before 1983 (or 1988).

Resolution 83-13 provides that: "Discharges of waste from individual and community sewage disposal systems are prohibited effective November 1, 1988, in the Los Osos/Baywood Park area" The Resolution goes on to specify an *immediate* prohibition (that is, effective at the time of the Resolution's approval, in 1983) on discharges from systems within the prohibition area "in excess of an additional 1150 housing units (or equivalent)" The Central Coast Water Board further noted that "[f]ailure to comply with any of the compliance dates established by Resolution 83-13 will prompt a Regional Board hearing . . . to consider adoption of an immediate prohibition of discharge from additional and individual community sewage disposal systems."

Petitioners claim that "all of the targeted individuals' homes were built before 1988 and are not any of the additional units subject to Resolution 83-13."⁶⁸ Clearly, however, all systems within the prohibition zone are subject to Resolution 83-13. Homes existing prior to 1988 (or 1983, for that matter) are not beyond the reach of the prohibition.

Petitioners also argue that a 1996 change in the law allows them to challenge Resolution 83-13 now. Before 1996, Water Code section 13330, allowing for superior court review of State Water Board orders and decisions issued pursuant to Water Code section 13320, provided that failure to file a petition for writ of mandate in such a matter "shall not preclude a party from challenging the reasonableness and validity of a decision or order of a regional board or the state board in any judicial proceedings brought to enforce such decision or order or for other civil remedies." That provision applied to challenges within judicial proceedings, and the continuing effect of the prior law was limited to proceedings then pending.⁶⁹ In addition, Petitioners seek review of Resolution 83-13 pursuant to Water Code section 13320, which does not allow for review of basin plan amendments or prohibitions adopted under Water Code section 13280.⁷⁰ Petitioners can not challenge Resolution 83-13 through their petitions.

Contention: Petitioners claim that the Central Coast Water Board is "a biased panel who cannot provide a fair and impartial hearing" because of prior involvement of the Water Board's regular legal counsel advising the Prosecution Team. Petitioners claim that the enforcement proceedings should have been "wholly stricken and started again from scratch."

Discussion: The case law does not establish prejudice or a due process violation. Moreover, the Central Coast Water Board actually did begin the case anew after assignment of substitute counsel. The contention is without merit.

⁶⁸ PZLDF Petitioners, Points and Authorities, at p. 33.

⁶⁹ When the amendments eliminating this provision were adopted, the Legislature also provided that the changes "do not apply to any proceeding for judicial review of a decision or order of the state board that is pending on December 31, 1996, and the applicable law in effect on that date shall continue to apply to that proceeding." (Wat. Code, § 13331.2.)

⁷⁰ Wat. Code, § 13320, subd. (a). See, footnote 9.

APR 16 2007

Petitioners cite case law providing that a probability of bias or unfairness may result where the prosecution attorney in an administrative adjudicative hearing has advised or advises the decision-making body on other matters.⁷¹ The court in question based its finding on the "totality of the circumstances," concluding that an attorney with a recurring counseling role could not contemporaneously appear as an advocate before the agency in a different proceeding.⁷² The decision does not appear to have any relevance to this case, where the attorney who appeared before the Central Coast Water Board as an advocate had never counseled or advised the Board before. Petitioners also argue that non-attorney members of the Prosecution Team were thus disqualified on the basis of their prior relationship with the Central Coast Water Board. However, no case has extended such a concept beyond the realm of the attorney's role in administrative proceedings, and the "totality of the circumstances" discussed in the *Quintero* case seemed to focus on the special nature of the attorney-client relationship. Moreover, the California Supreme Court has recently reiterated that the Administrative Procedure Act only requires a limited internal separation of functions.⁷³

It is unclear what Petitioners mean by their claim of prejudice because the proceedings were not "wholly stricken." The Central Coast Water Board Chair issued a ruling dated August 4, 2006, providing that "[t]he Prosecution Team shall be required to present its entire case from the beginning. All previous evidence and testimony prepared or presented by the Prosecution team, including proposed Cease and Desist Orders, staff technical analysis, agenda materials, and supporting documentation shall be stricken from the record." As a result, the entire enforcement proceeding was re-commenced after substitution of counsel.

Contention: Petitioners state that the Central Coast Water Board's actions in adopting the CDOs served to place the Prohibition Zone on the Cortese List, which concerns actions involving hazardous waste discharges. Petitioners therefore claim that categorical exemptions applicable to the California Environmental Quality Act (CEQA)⁷⁴ were thereby inapplicable.

Discussion: Petitioners have provided no evidence to support a finding that the onsite wastewater systems within the Prohibition Zone discharge hazardous waste or materials. The data and evidence upon which the Central Coast Water Board has based the prohibition and other enforcement actions have not included toxic or hazardous substance substance. The focus has largely been on nitrates and coliform. Therefore, the limitation on availability of CEQA exemptions is inapplicable.

Government Code section 65962.5, subdivision (c)(3) directs that the State Water Board compile and maintain a list of a number of sites, including: "[a]ll cease and desist orders issued

⁷¹ *Quintero v. City of Santa Ana* (2003), 114 Cal.App.4th 810. Petitioners also cite a superior court decision that is currently under appeal and to which the Central Coast Water Board was not a party. Thus, the case is not binding precedent.

⁷² *Quintero*, 114 Cal.App. 4th at 817.

⁷³ The California Supreme Court has found that fundamental fairness in agency adjudicative hearings requires only a limited internal separation of functions, such that separation of function in compliance with statutory ex parte rules was required only as to specific cases. (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1, 16.)

⁷⁴ Pub. Resources Code, § 21000 et. seq.; Cal. Code Regs., tit. 14, § 15000 et. seq.

APR 16 2007

after January 1, 1986, pursuant to Section 13301 of the Water Code . . . that concern the discharge of wastes that are hazardous materials." Petitioners cite to the definition of "hazardous materials" contained in Health and Safety Code section 25501, subdivision (o), which refers to "any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment." The definition goes on to include "hazardous substances" and "hazardous waste." Petitioners then note that title 14, California Code of Regulations, section 15300.2, subdivision (e) prohibits use of a categorical exemption from CEQA for "hazardous waste sites" included on a listing compiled pursuant to Government Code section 65962.5.

The CDOs adopted by the Central Coast Water Board list four separate exemptions from the requirements for preparation of environmental documents under CEQA.⁷⁵ All are categorical exemptions, classes of projects that "the Secretary for Resources has found . . . do not have a significant effect on the environment."⁷⁶ While the CDO listing required pursuant to Government Code section 65962.5, subdivision (c)(3) refers to "hazardous materials," the CEQA regulation restricting applicability of categorical exemptions specifically names "hazardous waste sites." "Hazardous waste" is defined to include those designated under the federal Resource Conservation and Recovery Act (RCRA)⁷⁷, toxic pollutants and others.⁷⁸

It appears unlikely that the CEQA reference to "hazardous waste sites" was meant to include those with discharges of domestic sewage. Nor have Petitioners provided any evidence of the discharge of hazardous wastes from septic systems in the Prohibition Zone. From a practical standpoint, the regulation of domestic sewage as hazardous waste or hazardous material would have broad ramifications throughout the state and was not likely intended.

IV. CONCLUSION

The Petitioners fail to raise substantial issues that are appropriate for review by the State Water Board. Therefore, I recommend that the petition be dismissed. Attached is a letter to that effect for your signature. Because I recommend dismissal, it is unnecessary to address the request for stay. If you should have any questions, please contact Marleigh Wood, Staff Counsel of my staff at (916) 341-5169.

bc: Betsy Jennings, OCC [via email only]
Michael Lauffer, OCC [via email only]
Dolores White, OCC [via email only]

MJWood/clbashaw

03-19-07 / rvs'd 03-20-07 / rvs'd 03-26-07 / rvs'd 04-16-07

i:\durig\2-mjw\1a-1825 & a-1825(a) dismissal\1a-1825 & a-1825(a) dismissal memo.doc

⁷⁵ The exemptions listed are: Cal. Code Regs., tit. 14, § 15307 (actions by regulatory agencies for protection of natural resources), Cal. Code Regs., tit. 14, § 15308 (actions by regulatory agencies for the protection of the environment), Cal. Code Regs., tit. 14, § 15321 (enforcement actions by regulatory agencies), and Cal. Code Regs., tit. 14, § 15301 (existing facilities involving negligible or no expansion of use).

⁷⁶ Cal. Code Regs., tit. 14, § 15300.

⁷⁷ 42 U.S.C. §§ 6901 et seq.

⁷⁸ Health & Saf. Code, § 25501, subd. (q) (referring to definitions contained in sections 25115, 25117, and 25316).